

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 23, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 17OD-163

OAHU

Grant of Term Non-Exclusive Easement to Shirley Patricia Gulmon, Trustee for Access Purposes, Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-3-017: adjacent to 061.

APPLICANT:

Shirley Patricia Gulmon, Trustee of Shirley P. Gulmon Revocable Trust dated September 11, 2008

LEGAL REFERENCE:

Sections 171-13 and 17, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Kailua, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-3-017: adjacent to 061, as shown on the attached maps labeled **Exhibits A1 to A3**.

AREA:

975 square feet, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban

City & County of Honolulu LUO: R-10

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Vacant and Unencumbered

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," item 46 that states, "creation or termination of easement, covenants, or other rights in structures or land." See **Exhibit B**.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Pay for an appraisal to determine the one-time payment;
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
3. Process and obtain designation of easement approval from the Department of

- Planning and Permitting at Applicant's own cost; and
4. Upon request, obtain a title report to ascertain ownership and legal access at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Applicant is the owner of the property identified as tax map key (1) 4-3-017:061, or Lot 229 ("Lot 229") as shown on Map 102, dated September 13, 1955, Land Court Application 323 ("Map 102"). According to the title deed for Lot 229¹, the subject lot has the access right "...over and across Lot 20-I as shown on Map 4 ...".

Below is the history of consolidation and subdivision that Lot 229 has gone through, noting that only the lots involved are referenced in the table below.

Lot No.	Map	Map Dated	Process	Exhibit
20-I, 20-J, 20-K	4	6/23/1925	Subdivision into Lots 20-A to 20-X.	C-1
20-J	60	7/11/1950	1 st accretion	C-2
155 & 156	67	10/5/1951	Subdivision of Lot 20-K into Lots 155 and 156	C-3
155	97	7/26/1955	Accretion	C-4
20-J	98	7/26/1955	2 nd accretion	C-5
229 (the subject)	102	9/13/1955	Consolidation of Lots 155 (Map 97), 156 (Map 67), and 20-J (Map 98) into Lots 221 to 232.	C-6

On Exhibit C-6, the makai boundary of Lot 20-I is incorrectly depicted at a location almost lining up with the makai boundary of Lot 229. Nevertheless, DAGS Survey Division confirmed that Lot 20-I was created in 1925 and has remained unchanged. Exhibit A-2, which is an excerpt of tax map, clearly shows that the original makai boundary of Lot 20-I does not even reach the mauka boundary of Lot 229. Staff also notes that Lot 20-I was never part of the subdivision in 1955 as shown on Exhibit C-6.²

Lot 229 is currently listed on the market for sale. As part of the due diligence, the lack of legal access explained above became an issue. Applicant indicated that Lot 229 has been using the access for over 60 years. Also, Applicant provides aerial photos at **Exhibits D-1** and **D-2** showing the requested location before and after the easement is developed, if approved.

Staff discussed the subject matter with the realtor representing the Applicant. Upon review of the situation, staff believes that a non-exclusive access easement would be the

¹ Quitclaim deed recorded as Land court document No. 3844467 recorded on April 2, 2009.

² Title of Exhibit C mentions the consolidation of Lots 155, 156, 20-J, and subdivided into Lots 221 to 232, inclusive, Lot 20-I was never part of this consolidation/subdivision process.

resolution. Staff indicated that issuance of such easement would be subject to payment of fair market value as required by the statutes. In addition to the payment of consideration, other associated costs will also be required, e.g. appraisal cost, surveyor cost, and obtaining insurance to include the State as additionally insured regarding the requested easement area. All these means the Applicant need to pay for them.

For a land locked parcel, the Division would typically recommend the Board issue a perpetual, non-exclusive access easement, further subject to payment of consideration. However, for any disposition requests near the shoreline, staff would recommend a 55-year term, non-exclusive easement.

Further, the Applicant does not intend to improve the requested easement area, but instead will retain the current topographical condition. A photo taken during recent site inspection is shown on **Exhibit E** for Board's information. Staff believes that the proposed improvement would not represent substantial change to the area. Therefore, staff recommends the Board declare the request exempt for the preparation of an environmental assessment pursuant to Chapter 343, HRS.

Comments from agencies

State Historic Preservation Division and Board of Water Supply have no objections or comments to the request.

Department of Planning and Permitting has no objections to the request and recommends the designation of the easement with the department.

DAGS Survey Division confirmed configuration and area of Lot 20-I had never been revised since its initial subdivision in 1925.

Division of Aquatic Resources has no objections to the request. However, it recommends that mitigation measures be taken during construction activities in order to prevent contaminants from possibly entering the aquatic environment. In addition, site work is suggested to be conducted during the period of minimal rainfall and lands denuded of vegetation be replanted or covered as quickly as possible to control erosion.

Department of Health, Office of Conservation and Coastal Lands, Department of Parks and Recreation, Department of Facility Maintenance, and Office of Hawaiian Affairs have not responded to the solicitation for comments before the suspense date.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as


provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

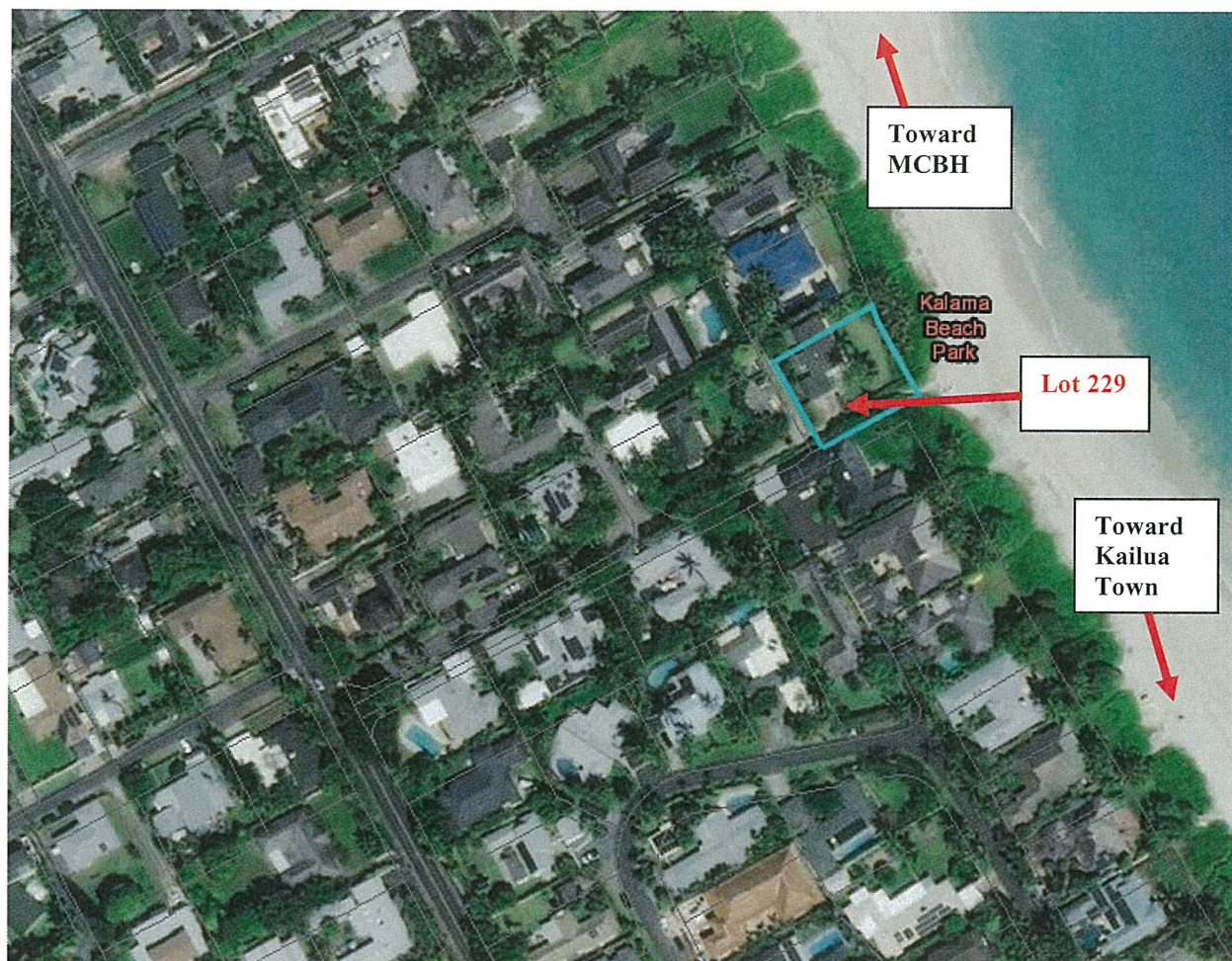
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-3-017:061 when such change in ownership occurs prior to the execution of the requested easement, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Shirley Patricia Gulmon, Trustee of Shirley P. Gulmon Revocable Trust dated September 11, 2008 covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual/term access easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-3-017:061, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (1) 4-3-017:061

EXHIBIT A-1

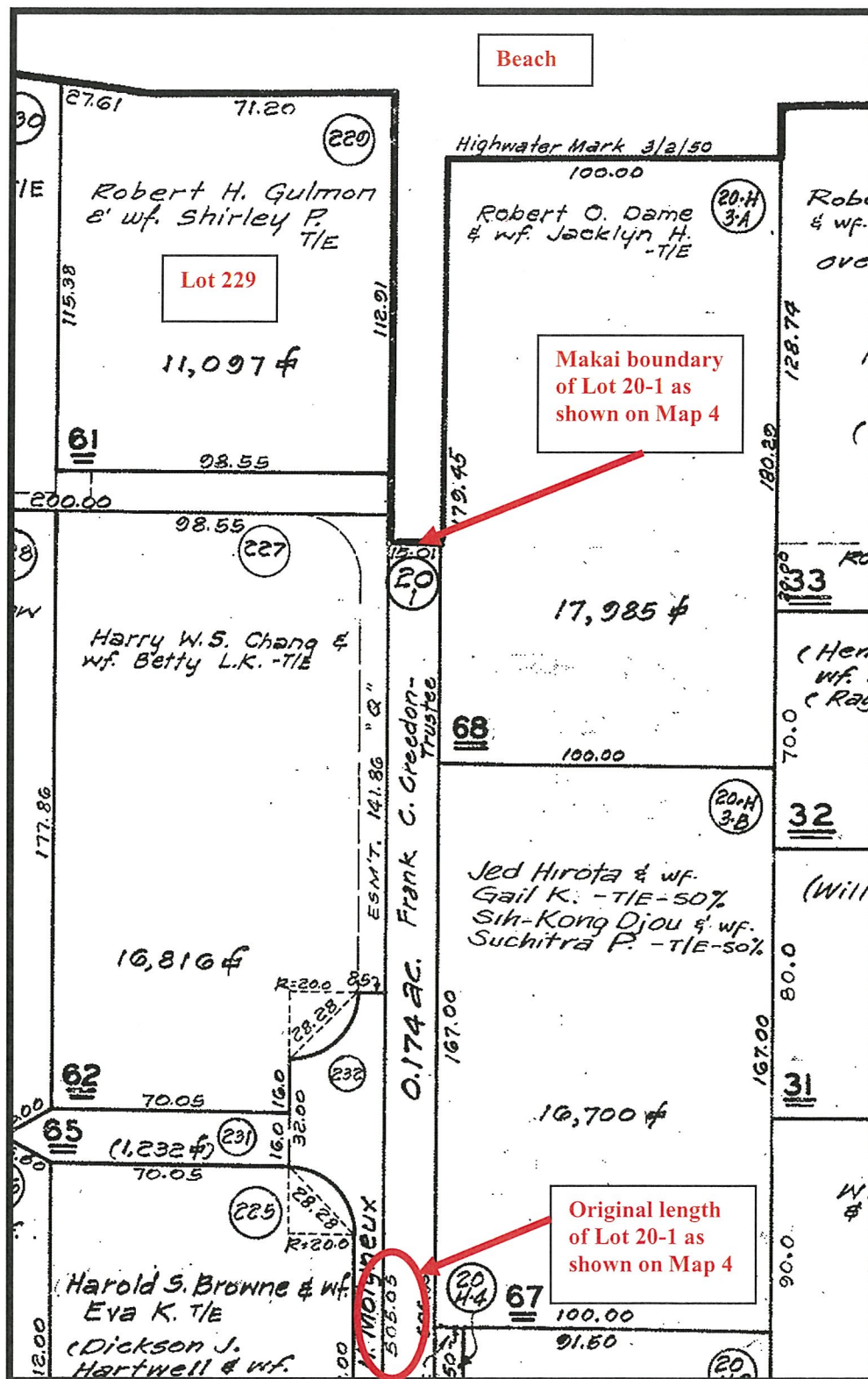
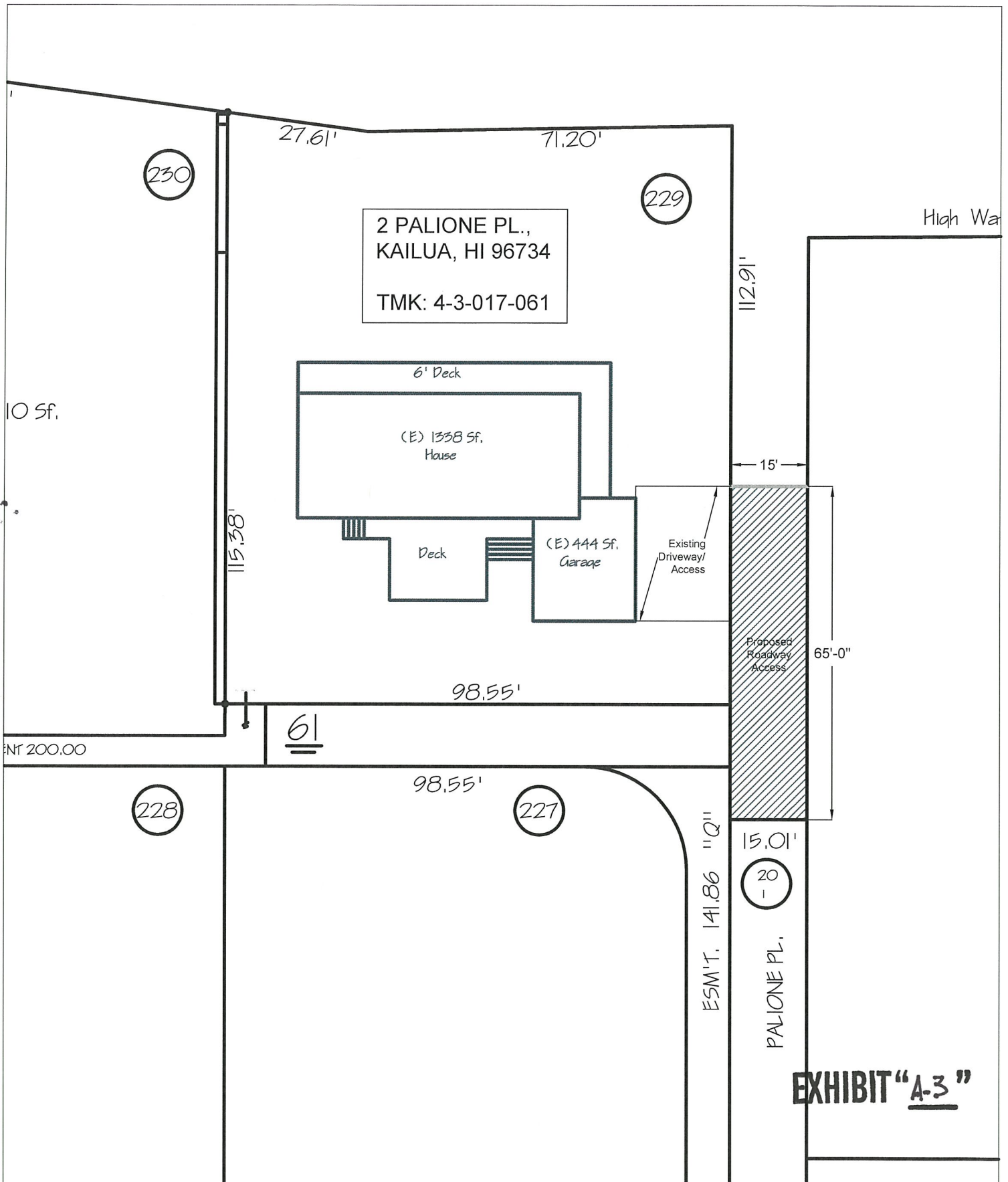


EXHIBIT A-2



2 Palione Pl. Kailua, HI 96734	2 Palione Pl. Access Proposal	Designer: Kyle Stephenson
	TMK: 4-3-017-061	2/13/2018

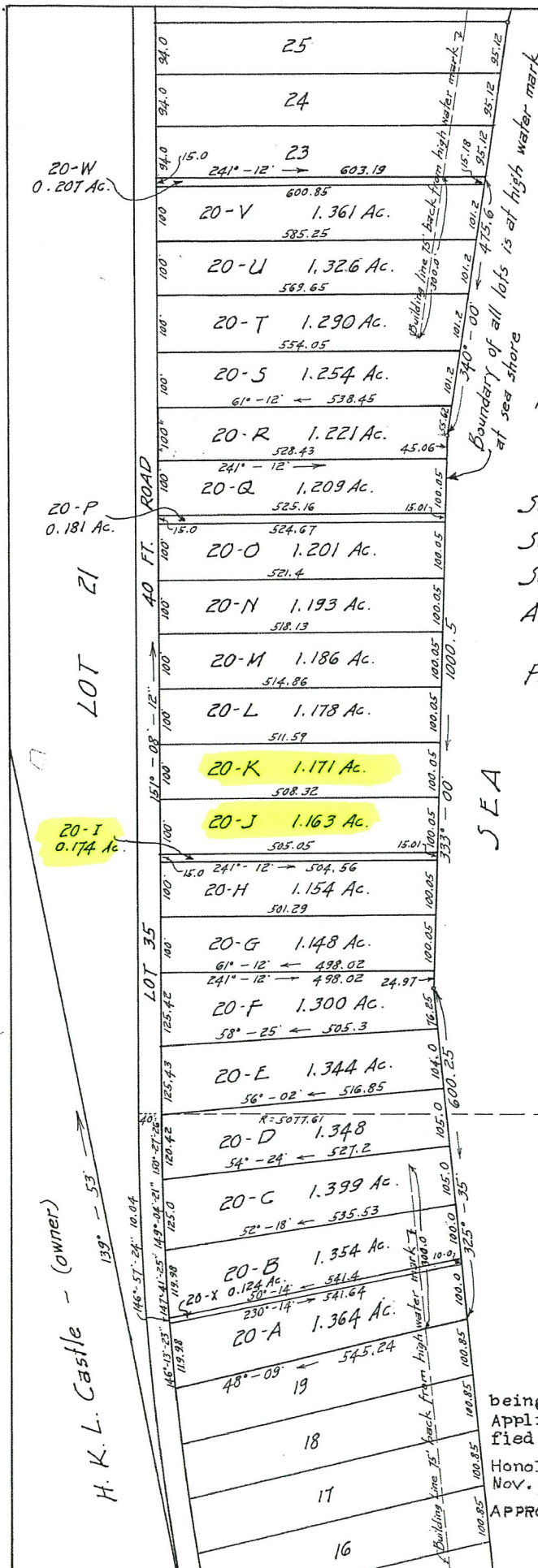
EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Term Non-Exclusive Easement for Access Purposes
Project / Reference No.:	PSF 17OD-163
Project Location:	Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-3-017: adjacent to 061.
Project Description:	Term, non-exclusive easement for access purposes to serve a land locked private property.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," item 46 that states, "creation or termination of easement, covenants, or other rights in structures or land."</p> <p>The Applicant is not planning to conduct any major improvement other than paving into a driveway. Therefore, staff believes that the proposed project would involve negligible or no expansion or change in use beyond that previously existing.</p>
Consulted Parties	Agencies as noted in the submittal
Recommendation:	That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT B

MAP 4



LAND COURT TERRITORY OF HAWAII

SUBDIVISION OF LOT 20 OF THE
SUBDIVISION OF LOT 11 OF THE
SUBDIVISION OF LAND COURT
APPLICATION N^o 323 INTO LOTS
20-A TO 20-X (INCLUSIVE)
Pueohala, Kailua, Koolaupoko, Oahu, T.H.

Scale: 1 in. = 200 ft.

WRIGHT, HARVEY & WRIGHT,

By Geo. F. Wright.

Surveyor & Maker of Plan,
855 Kaahumanu Street,
Honolulu, T. H. Sept. 23, 1925.

Armstrong Limited

By J. R. Hart
President
and as Davis
Secy

John Armstrong 10.14.25
J. R. Hart
Regulator

I hereby certify that the map hereon
being a subdivision of Lot 20 of Lot 11 of L.C.
Application No. 323, has been examined and veri-
fied and found to be correct.

Honolulu, T.H. Wallace Walla
Nov. 28 1925. Surveyor, Territory of Hawaii.

APPROVED: November 28, 1925.

Geo. J. Owens
Judge of the Land Court.

EXHIBIT "C-1"

LAND COURT

TERRITORY OF HAWAII

ARTHUR van HORN MOLYNEUX
JANE KLEBAHN MOLYNEUX - APPLICANTS

LAND COURT APPLICATION 323

KALAMA TRACT

LOT 20-J

(Boundary as of June 27, 1950)
PUEOHALA, KAILUA KOOLAUPOKO, OAHU, T. H.

This map is from an actual survey made on the ground by or under the direct supervision of the undersigned on June 27, 1950, and may be checked by the Territorial Surveyor with my Field Book number 54, page 50, Calculation Book number 15 page 271, and work sheet filed in my office.

22 Dillingham Bldg. Annex
Honolulu, T. H.
July 11, 1950



Bernard H. McKeague
Registered Land Surveyor 232
Land Court Surveyor 43

ARTHUR van HORN MOLYNEUX
OWNERS: JANE KLEBAHN MOLYNEUX
OWNERS CERTIFICATE OF TITLE : 13,995

I hereby certify that Decree establishing highwater mark and amending boundaries as of June 27, 1950 of Lot 20-J of the herein application has been entered on January 2, 1952 and that the same has been noted on the Owners' Transfer Certificate of Title.
Honolulu, T. H.
January 2, 1952. *John M. Holland*
Registrar of the Land Court.

NOTE: Figures shown thus ② indicate number of course in description. Owners of adjoining land are from records of the Taxation Maps Bureau.

I hereby certify that the description of survey and map hereon designating the boundaries of Lot 20-J, as of June 27, 1950, have been checked on the ground and the same have been found to be in accord.
Honolulu, T. H.
November 1, 1950. *P. G. Coward*
Surveyor, Territory of Hawaii

Filed Aug. 10, 1950
Abraham H. Akama
Assistant Register

15" x 21" = 2.2 Sq. Ft.

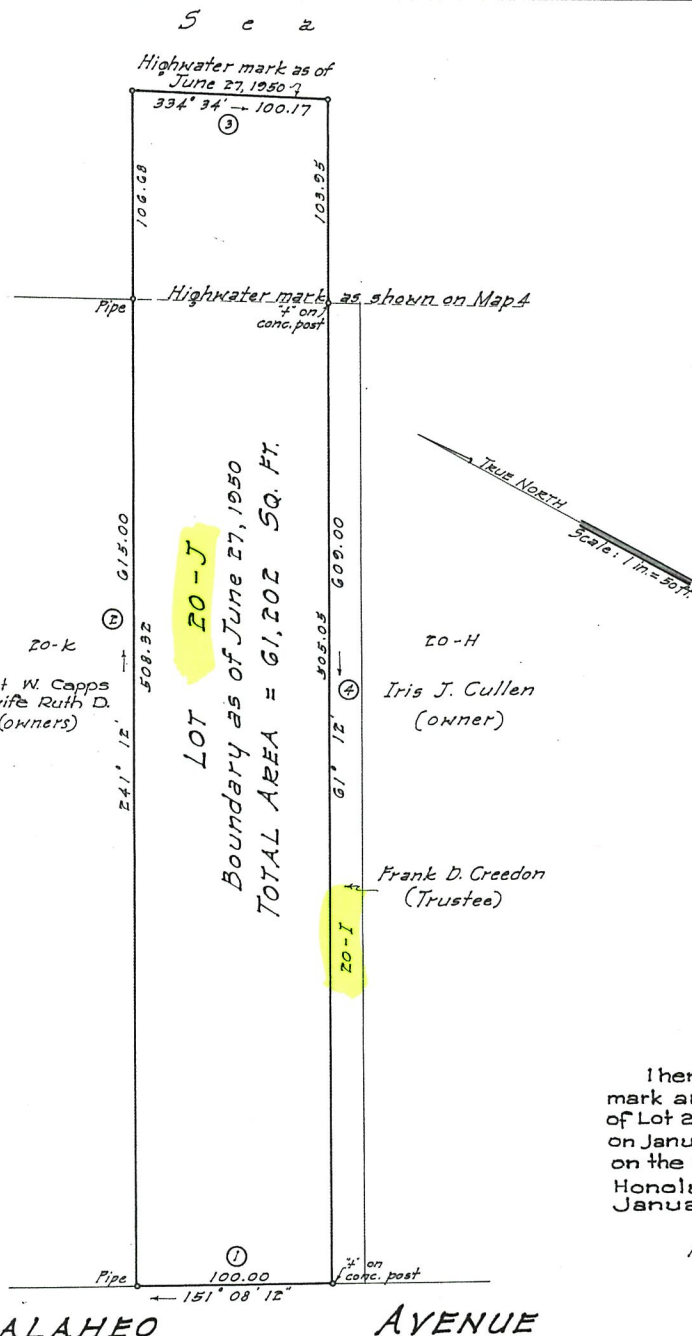


EXHIBIT "C-2"

KALAHEO

AVENUE



155

0.845 Ac.

EASEMENT "F"
(Right-of-way)

156

14,200 Sq.Ft.

NOTE: Area of Easement "E" = 3,550 Sq. Ft.
Area of Easement "F" = 1,670 Sq. Ft.

KALAHEO AVENUE

Tap Map Key: 4-3-17:11

high water mark
seashore

TRUE NORTH

Scale: 1 in. = 40 ft

LAND COURT

TERRITORY OF HAWAII

LAND COURT APPLICATION 323

SUBDIVISION OF LOT 20-K
AS SHOWN ON MAP 4
INTO LOTS 155 AND 156
AND THE DESIGNATION OF EASEMENTS "E" AND "F"
OVER LOT 155
AT PUEOHALA, KAILUA, KOOLAUPOKO, OAHU, T.H.

October 5, 1951
338 Dillingham Bldg.
Honolulu, T. H.



James B. Mann
Registered Professional Surveyor
Certificate Number 75
Land Court Surveyor
Certificate Number 1

OWNERS: ROBERT WALDRON CAPPS AND
RUTH DAVIES CAPPS

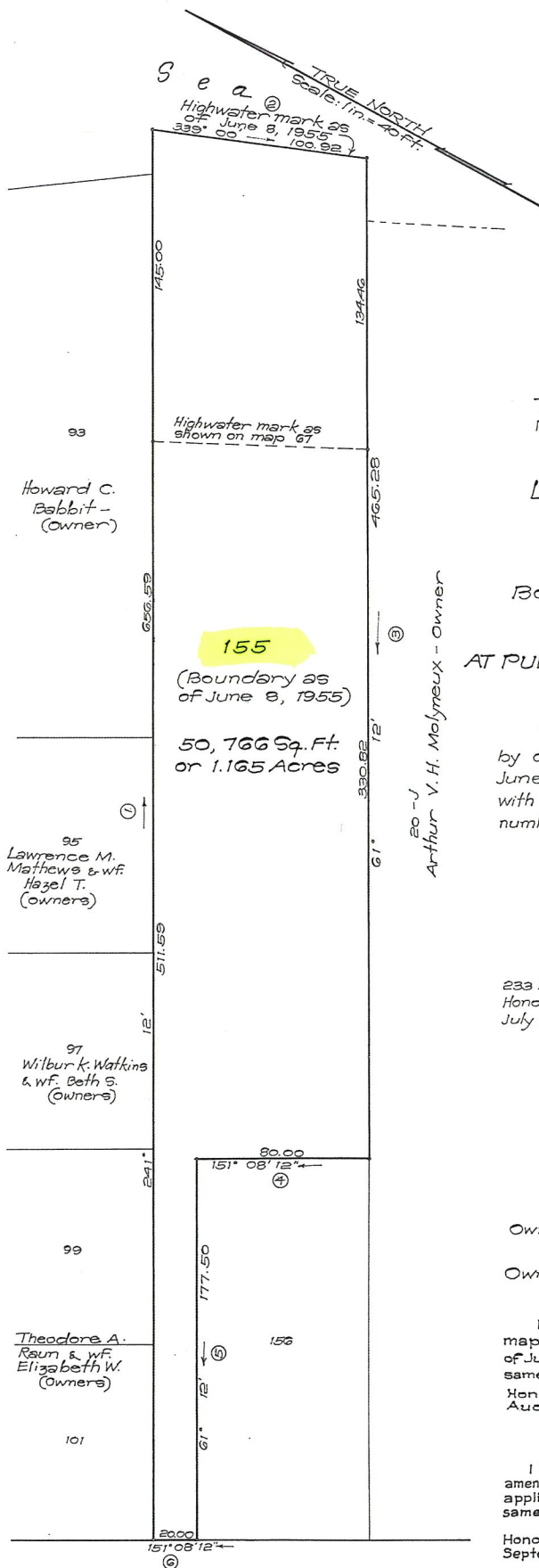
OWNERS' CERTIFICATE OF TITLE: 46,630

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED..OCTOBER.23,1951.....
BY ORDER OF THE COURT *P. G. 01 10*

REGISTRAR OF THE LAND COURT

Filed Oct. 19, 1951
Abraham W. Adams
Assistant Registrar

$$15" \times 21" = 2.19 \text{ Sq. Ft.}$$



LAND COURT

TERRITORY OF HAWAII

THURSTON TWIGG-SMITH AND
BESSIE TWIGG-SMITH (Husband and Wife) - APPLICANTS

LAND COURT APPLICATION 323

KALAMA TRACT

LOT 155

Boundary as of June 8, 1955 and cancellation of
Easements "E" and "F" as shown on map 67

AT PUEOHALA, KAILUA, KOOLAUPOKO, OAHU, T.H.

This map is from an actual survey made on the ground
by or under the direct supervision of the undersigned on
June 8, 1955 and may be checked by the Territorial Surveyor
with my Field Book number 822, page 29, Calculation Folder
number 1-4735-0-8 and work sheet 1-4735-0-9.



233 Merchant St.
Honolulu, T.H.
July 26, 1955

R. M. TOWILL CORPORATION, LIMITED

By: R. M. Towill
Registered Professional Surveyor
Certificate Number 151

Owners: Thurston Twigg-Smith and
Bessie Twigg-Smith (Husband and Wife)

Owners' Certificate of Title: 50,766

I hereby certify that the description of survey and
map hereon designating the boundaries of Lot 155 as
of June 8, 1955 have been checked on the ground and the
same found to be in accord.

Honolulu, T. H.
August 31, 1955.

Jamie M. Dunn
Surveyor, Territory of Hawaii

I hereby certify that Decree establishing highwater mark and
amending boundaries as of June 8, 1955 of Lot 155 of the herein
application has been entered on September 13, 1955 and that the
same has been noted on the Owner's Transfer Certificate of Title.

Honolulu, T.H.
September 13, 1955

Arthur H. Hulse
Registrar, of the Land Court

EXHIBIT "C-4"

NORTH KALAHEO AVENUE

Note: Figures shown thus (2) indicate the
number of course in description.
Owners of adjoining land as shown
on plan are from records of the
Taxation Maps Bureau

Filed Aug. 5, 1955
Arthur H. Hulse
Assistant Registrar

Sea
TRUE NORTH
Scale: 1 in. = 40 Ft.

Highwater mark
as of June 8, 1955
339° 00' 11" 330° 10' 11.20"
Highwater mark as
shown on map '60

LAND COURT

TERRITORY OF HAWAII

ARTHUR VAN HORN MOLYNEUX (Unmarried) - APPLICANT

LAND COURT APPLICATION 323

KALAMA TRACT

LOT 20-J

Boundary as of June 8, 1955

AT PUEOHALA, KAILUA, KOOLAUPOKO, OAHU, T.H.

20-J

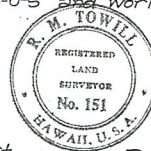
(Boundary as
of June 8, 1955)

63,979 Sq. Ft.
or 1.469 Acres

Thurston Twigg-Smith
& wf. Bessie
(owners)

Kalama Land Co., Ltd. (owner)

233 Merchant St.
Honolulu, T. H.
July 22, 1955



R.M. TOWILL CORPORATION, LIMITED

BY: [Signature]
Registered Professional Surveyor
Certificate Number 151

Owner: Arthur Van Horn Molyneux (Unmarried)

Owner's Certificate of Title: 60,021

I hereby certify that the description of survey and
map hereon designating the boundaries of Lot 20-J
as of June 8, 1955 have been checked on the ground
and the same found to be in accord.

Honolulu, T. H. James M. Dunn
August 31, 1955. Surveyor, Territory of Hawaii.

I hereby certify that Decree establishing highwater mark and
amending boundaries as of June 8, 1955 of Lot 20-J of the herein
application has been entered on September 13, 1955 and that the
same has been noted on the Owner's Transfer Certificate of Title.

Honolulu, T. H.
September 13, 1955

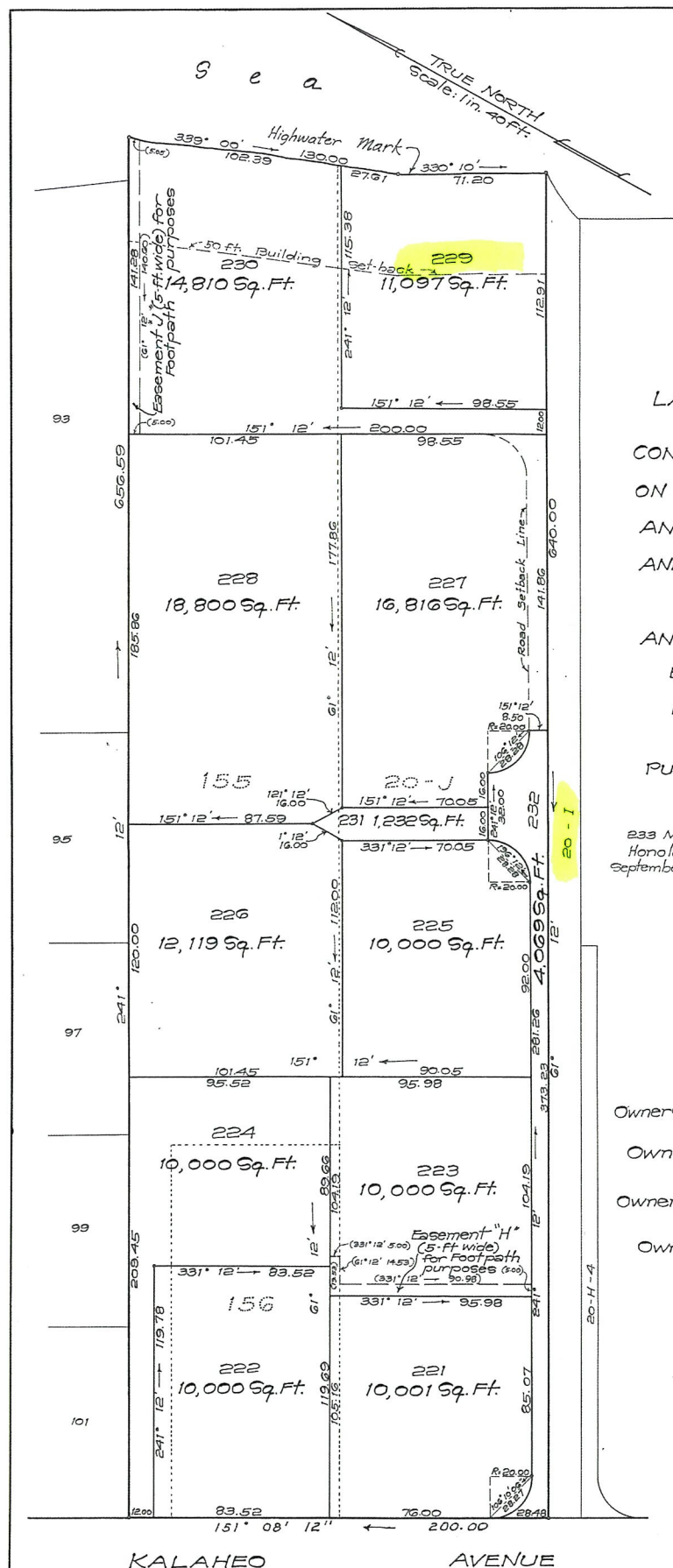
[Signature]
Registrar, of the Land Court

NORTH KALAHEO AVENUE

Note: Figures shown thus ② indicate the
number of course in description.
Owners of adjoining land as shown
on plan are from records of the Taxation
Maps Bureau

EXHIBIT "C-5"

Filed Aug. 5, 1955
Abraham H. Akana
Assistant Registrar



LAND COURT

TERRITORY OF HAWAII

LAND COURT APPLICATION 323

CONSOLIDATION OF LOT 155 AS SHOWN ON MAP 97, LOT 156 AS SHOWN ON MAP 67 AND LOT 20-J AS SHOWN ON MAP 98 AND RESUBDIVISION OF SAID CONSOLIDATION INTO LOTS 221 TO 232, INCLUSIVE AND DESIGNATION OF EASEMENTS "H" AND "J" EASEMENT "H" OVER AND ACROSS LOT 223 EASEMENT "J" OVER AND ACROSS LOT 230

PUEOHALA, KAILUA, KOOLAUPOKO, OAHU, T. H.

233 Merchant St.
Honolulu, T. H.
September 13, 1955

R.M. TOWILL CORPORATION, LIMITED

BY: [Signature]
Registered Professional Surveyor
Certificate Number 151



Thurston Twigg-Smith and
Owners of Lots 155 and 156: Bessie Twigg-Smith (Husband and wife)

Owners' Certificates of Title: 50,762
59,013

Owner of Lot 20-J: Arthur Van Horn Molyneux
(Unmarried)

Owner's Certificate of Title: 60,021

AUTHORIZED APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED: SEPTEMBER 30, 1955.
BY ORDER OF THE COURT

[Signature]
REGISTRAR OF THE LAND COURT

EXHIBIT "C-6"

Note:
Area of Easement "H" = 553 Sq. Ft.
Area of Easement "J" = 705 Sq. Ft.

Filed Sept. 26, 1955
P. H. Halliday, Registrar



EXHIBIT "D-1"



EXHIBIT "D-2"



NO PARKING
ANYTIME
VIOLATORS
WILL BE
TOWED
AT
THEIR
OWNER'S
RISK

PROPOSED EASEMENT

EXHIBIT "E"